

to be disbursed are 63 percent returned to the U.S. Treasury and 37 percent returned to the State Medicaid agency.

(ii) Beginning one year after the effective date of this section, CMS shall annually update these proportions based on the most recent 3-year fiscal period, prior to the year in which the CMP is imposed, for which CMS determines that the relevant data are essentially complete.

(iii) The portion corresponding to the Medicare payments is returned to the U.S. Department of Treasury as miscellaneous receipts.

(iv) The portion corresponding to the Medicaid payments is returned to the State Medicaid agency.

(2) Penalties may not be used for Survey and Certification operations nor as the State's Medicaid non-Federal medical assistance or administrative match.

#### § 488.850 Directed plan of correction.

(a) *Application.* CMS may impose a directed plan of correction when an HHA:

(1) Has one or more deficiencies that warrant directing the HHA to take specific actions; or

(2) Fails to submit an acceptable plan of correction.

(b) *Procedures.* (1) Before imposing this sanction, CMS provides the HHA notice of the impending sanction.

(2) CMS or the temporary manager (with CMS approval) may direct the HHA to take corrective action to achieve specific outcomes within specific timeframes.

(c) *Duration and effect of sanction.* If the HHA fails to achieve compliance with the conditions of participation within the timeframes specified in the directed plan of correction, CMS:

(1) May impose one or more other sanctions set forth in § 488.820; or

(2) Terminates the provider agreement.

#### § 488.855 Directed in-service training.

(a) *Application.* CMS may require the staff of an HHA to attend in-service training program(s) if CMS determines that—

(1) The HHA has deficiencies that indicate noncompliance;

(2) Education is likely to correct the deficiencies; and

(3) The programs are conducted by established centers of health education and training or consultants with background in education and training with Medicare Home Health Providers, or as deemed acceptable by CMS and/or the State (by review of a copy of curriculum vitas and/or resumes/references to determine the educator's qualifications).

(b) *Procedures—*(1) *Action following training.* After the HHA staff has received in-service training, if the HHA has not achieved compliance, CMS may impose one or more other sanctions specified in § 488.820.

(2) *Payment.* The HHA pays for the directed in-service training for its staff.

#### § 488.860 Continuation of payments to an HHA with deficiencies.

(a) *Continued payments.* CMS may continue payments to an HHA with condition-level deficiencies that do not constitute immediate jeopardy for up to 6 months from the last day of the survey if the criteria in paragraph (a)(1) of this section are met.

(1) *Criteria.* CMS may continue payments to an HHA not in compliance with the conditions of participation for the period specified in paragraph (a) of this section if all of the following criteria are met:

(i) The HHA has been imposed an alternative sanction or sanctions and termination has not been imposed.

(ii) The HHA has submitted a plan of correction approved by CMS.

(iii) The HHA agrees to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

(2) CMS may terminate the HHA's provider agreement any time if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments for new admissions.* If termination is imposed, either on its own or in addition to an alternative sanction or sanctions, or if any of the criteria set forth in paragraph (a)(1) of this section are not met, the HHA will receive no Medicare payments, as applicable, for new admissions following the last day of the survey.